THE UNTOLD STORY OF THE SURVIVAL OF THE



DONALD PRELL

The Untold Story of the Survival of the Penn Central Company

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Strand Publishing

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Foreword

The story you are about to read is factual from start to finish. The people are real, their names are given in full. You could question the ethics of what transpired. Did the means justify the end? You will decide. It is titled an '*Untold Story*' because, other than a few numbered copies previously published, how the Penn Central Company was saved from having to be liquidated has not been known. Now through the medium of eBook publishing the story is no longer the sole provenance of a few collectors of Penn Central memorabilia.

Merge then Collapse

Even on Wall Street one's memory can be short-lived. ENRON and WorldCom have been described as America's largest bankruptcies. But few can name another, which in current dollars, was almost as large as the ENRON and WorldCom debacles.

Players of MONOPOLY will recall the value of controlling the railroads, with The Pennsylvania Railroad one of the historic four. (An interesting footnote is: in depression-ridden 1935, the firm of Parker Brothers was itself near bankruptcy, when it reluctantly acquired then marketed MONOPOLY. The board game became an instant bestseller, both in America and abroad.)

Almost four decades ago, in 1968, the management of the New York Central Railroad Company were playing real life MONOPOLY with their repeated and ultimately successful attempt to merge with The Pennsylvania Company. In

1971 two top-notch reporters on the editorial staff of the Philadelphia *Bulletin*, Joseph R. Daughen and Peter Binzen, wrote a best-seller called *The Wreck of the Penn Central*. The book jacket describes it thus:

> *"One cold winter's day, after more than ten years of fighting, bargaining, and negotiating, the New York Central and Pennsylvania railroads merged to form the most monumental single railroad in the history of the United States: the Penn Central, a railroad worth $4.5 billion with over 20,000 miles of track, 95,000 employees, and an annual payroll of over $1 billion. The date of this merger: February 1,1968.*
>
> *On June 21, 1970, only 867 days later, with a sickening crash that jarred not only Wall Street but the government and the whole national economy, the Penn Central went broke. The largest single railroad became the largest single bankruptcy in the history of the United States*

The directors of Penn Central Company, after being informed there was insufficient cash to operate the railroad, chose to file a petition for reorganization under Section 77 of the Bankruptcy Act, and thereby put its wholly owned sub-

sidiary, the Penn Central Transportation Company, into bankruptcy. Section 77 of the Bankruptcy Act permitted a railroad to suspend most of its debts. The Section, adopted by Congress in 1933, was drawn specifically to cover railroads that found themselves in bankruptcy situations. Unlike ordinary bankruptcies, Section 77 did not provide for liquidation. It was a means for railroads to reorganize while the trains kept running.

The share price of the Penn Central Company – just as in the case of ENRON - had been in free-fall, dropping from a high of $86.50 to a low of $6.50, on the day the bankruptcy was announced. The next day the stock closed at $4.50. Authors Daughen and Binzen concluded their story with the bankruptcy of the Transportation Company. Yet the holding company continued operating.

Putting its major subsidiary into bankruptcy preserved the major asset of the Penn Central, but now, working capital was needed to pay expenses in order to maintain the value of the parent company's publicly traded shares.

Through the Swiss based investment-banking firm of Pressprich & Co. the Penn Central Company sold $24,000,000 of short-term notes (12% rate) to a number of banks and individuals in Switzerland and the United States.

At the time, it looked to be a “low-risk” investment, as the holding company had a number of valuable assets, apart from the railroads, which would eventually provide more than enough cash to retire the notes.

If everything had proceeded as planned there would be little more of interest to relate. Because it didn’t evolve that way, there is another story, which begins on a Wednesday afternoon in December of 1971.

The Phone Call

Harry Volk, President and CEO of the Union Bank of California summoned me to his office on the 10th floor of the Union Bank Building in downtown Los Angeles.

"Don, do you remember those Penn Central Notes Warner purchased for the bank last year; the short-term ones with the high yield?"

"Yes" I replied, "the 3 million Pressprich sold us yielding 12%."

"Well" Volk continued, "There is a problem with them, and I need your help. Let me get Warner up here, and we can discuss it together. And, er, what are you doing this Christmas?"

What else would I be doing, I mused, but the traditional festivities with my family? What I said was, "Just the usual, Mr. Volk." Invariably addressed as 'Mr. Volk" by everyone, even the management team, he was one of the old-fashioned stalwarts of complete separation of business from personal family concerns. Company parties did not happen. He was a

shrewd, capable businessman *par excellence* who was much admired.

At age 47, I was now a senior officer and a member of Union Bank's Management Committee. Because of past achievements, Volk often called on me to resolve ticklish credit or personnel problems. His inquiry about my plans for Christmas was the tip-off that a crucial situation was about to be revealed.

Warner Heineman entered and reported he had been informed the notes were in default as the Penn Central Company didn't have the funds to pay either interest or the principal. They were offering to restructure the debt with new notes, which included free warrants to purchase shares at $4.00 per share. Not a bad deal if you believed the company would survive. Heineman, who was head of Union Bank's International Division, had recommended to the investment committee that they accept the offer.

"So…..exactly what is the problem?" I asked.

Volk replied: "An hour ago I had a phone call from an attorney, a Lloyd Cutler, who is with a Washington D.C. law firm. He is representing a group of the note-holders, and wants our help."

He continued: "There are about 20 holders of the notes – banks and individuals. The agent for the notes, Schroders Bank, insists that 100% of note-holders sign off on the

restructure. Should any single one not agree, then Schroders would be obliged to bring an action to collect the notes, which would precipitate the filing of bankruptcy by the Penn Central itself. The railroad is already bankrupt, and they don't want that to happen to the holding company. Cutler said the entire group of note-holders, except for two individuals, have accepted the exchange offer. Of those two, the 'ringleader,' a Dr. Lauder, holds $300,000 of the Notes. The other fellow has $150,000."

"Now here is the problem, the Penn Central's board of directors desperately want to effect the restructuring. They will do almost anything to get the holdouts to sign, but can't allow the rest of the note-holders to know what they plan to do. Each of those banks that own notes - excluding us, of course - has a conflict of interest. Either they have loans to subsidiaries of the company or officers of the bank are also directors of the company. We are the only bank owning notes that does not have a conflict. Cutler would like one of our people to go to Zurich and convince the holdouts it is in their best interest to sign off on the deal"

"What I'd like, Don, is for you to fly to Washington D.C tomorrow, meet with Lloyd Cutler, then arrange to go on to Zurich to meet with the holdouts – can you do it, please?"

We both knew what I would answer, but I appreciated his asking.

To Washington D.C.

Business travel was a frequent occurrence, to which my family was well accustomed. In those days, to fly First Class from Los Angeles to Washington D.C. on PanAm, was to know a degree of pleasure in air travel. How to justify my absence from the family at Christmas-time would not be a pleasant prospect; so for the moment I merely hinted at the possibility to my wife, then packed a bag and took off the next morning.

Cutler and Pickering was - and still is - a very prestigious law firm in the District of Columbia. Lloyd N. Cutler, Yale Law School, 1939, Editor of his law Journal, was already a prominent figure on the Washington scene. He wasted no time in filing me in on the details of the proposed venture, and emphasized the extremely sensitive nature of the assignment. He revealed that some members of the Penn Central's board had put funds into an account in a Bank in

Zurich and signing authority for these would be mine to do with as I saw fit.

Mentally I rolled this nugget of fiscal largesse around in my mind as he went on:

"The primary holdout is a Doctor Lauder. He bought the notes and now feels he was cheated by the company. The other holdout is a Herr Schneider, who says he will do whatever Lauder does. Schroders Bank have asked Lauder if he would meet with you on December 27th. He has agreed, but is telling them it will do no good, as he has made up his mind not to sign."

"Do realize, if any of the other note-holders were to discover that Lauder was being paid, it would no doubt produce chaos as they would all want to be paid. We dare not even let Schroders know what is being done. In fact, when you leave my office, I don't want to know what you plan to do."

Plan, I didn't have a plan, not yet anyway. However the tantalizing prospect of convincing a singularly reluctant note-holder to put pen-to-paper was as intriguing a challenge as I'd yet encountered. Only after I had taken the measure of this Dr. Lauder would I be able to create some sort of inducement. Perhaps.

Lloyd Cutler stood up. "Here are the papers for Lauder and Schneider to sign. After they have been executed,

deliver them to Schroders and let me know it has been accomplished. Believe me, everyone appreciates your accepting this assignment. Good luck, and please give my thanks to Harry Volk."

To London

As I flew back to Los Angeles next morning at least a possible solution to the family Christmas dilemma began to take shape. Reaching the Union Bank building in downtown LA by mid-afternoon, I called Harry Volk to make my report.

"Mr. Volk, I'll do my best to accomplish this --- but I really don't want to be away from my family over Christmas. Since the bank has an apartment at the Grosvenor House in London, I'd like to use it, if it is available."

After a call to Lee Swett confirmed the apartment was indeed available through the first week of 1972, I drove home to tell my wife not to buy a tree -- just get out the suitcases and start packing.

"Darling, how would you like to spend Christmas and New Years in London? Owen and Erin will come with us too, of course." My English wife had lived and worked in London

before we met, so I was fairly confident her response would be positive.

“When do we leave? Who is paying for this?” She said, with alacrity and practical British thrift.

“We leave just as soon as you’re ready. The bank will be covering the cost, and we can use Swett & Crawford’s apartment at the Grosvenor House.” Two days later, we boarded a Pan Am flight to London, wearing winter clothing and ready for the chilly December weather ahead.

These events happened over thirty years ago, yet I can still recall as if it were yesterday.

While London has its share of fine hotels, the estimable Grosvenor House on Park Lane still reflected its earlier grand heyday. When Union Bank acquired a group of insurance companies, which included Swett & Crawford, one of the prize assets was an apartment in the Grosvenor House. These units are the height of luxury: a separate entrance from the street, room service around the clock, furnishings and décor which are the acme of quality. Initially downcast about leaving their friends at home at this time, our son and daughter soon laid claim to their own bedrooms (with six-inch-thick goose down comforters) and eagerly began devising their 'sees' and 'dos.' Quite sophisticated for their ages, Owen Trelawny had just-turned eleven and Erin Teleri nine-and-a-half, they had traveled abroad with us before.

Some good friends resided nearby on Mayfair's Green Street, within walking distance. We spent Christmas Eve there before a candlelight service at the American Church, then after a morning walk in Hyde Park, a memorable Christmas Dinner. I had reached a decision; one that would have a totally unanticipated result.

"Bette dear, I'm leaving tomorrow to try and resolve this thing, and I'd like to take Owen along. He'd appreciate seeing Zurich. You and Erin enjoy a few days together --- see some plays, go shopping, just enjoy yourselves."

To Zurich

So on Monday, December 26th, after a taxi to Heathrow, and an early Swissair flight, Owen and I checked into the Baur au Lac Hotel, where I had earlier reserved a two-room suite. Switzerland's weather, which can be disappointing in the extreme for summer visitors, is often at it best during winter. For us Zurich was dry, with even some weak winter sunlight. The lake view from this fine old hostelry is quite attractive. We both explored the Old Town before dinner then retired early.

Now anticipating my meeting with the recalcitrant Dr. Lauder, the next morning I telephoned his office to confirm our 10:00 a.m. appointment. Then with a suggestion to Owen that he go off and explore the town of Lucerne, and to ask the concierge where to catch the train, I promised to meet him back at the hotel for lunch. Lauder greeted me at

his office with stiff reserve. In his late fifties, well tailored and manicured, a stereotypical Swiss businessman - who also had investments in Sao Paulo, Brazil. He had been advised that I was a senior officer of Union Bank and that I wished to discuss the problem of the Penn Central notes. Polite but haughty indifference would best describe his attitude as he bade me take a seat.

With concise brevity I explained the current situation and how, "if the notes are not restructured the company will go into bankruptcy and many innocent investors --- widows and children --- will suffer." His response was immediate and direct. "I really don't care. I was lied to and cheated by Pressprich and the Penn Central. So let them all go to hell."

I was grateful that his English was excellent because my circa WWII German was limited. I outlined how Union Bank had invested $3,000,000 in the same notes and that I would sell our notes today for $300,000 (if I could find a buyer). But if he were prepared to go along with the restructuring, I was authorized to pay him $150,000 and he could keep his restructured notes and the free warrants, which were sure to be worth a lot of money in the future.

Aware I could always offer to pay up to 100 cents on the dollar, I first wanted to get a feeling of how tough a negotiator he was. I quickly found out. "You can pay me 100% for my position. I am still not interested. I was lied to

and cheated, and they will just have to suffer."

So far he was proving obdurate but this was still Round One. The art of negotiation requires time before the little windows of opportunity appear. "Do think, Dr. Lauder, of the thousands of people who will be hurt if the company goes under."

"Ich interessiere mich nicht für sie." was his response, which I took to mean, "I don't care about them."

Now it was almost one o'clock, when I was due to return to the hotel to meet Owen for lunch. With a sad smile and a brief shrug of resignation I indicated I was prepared to leave.

"Dr. Lauder, this is my first trip to Zurich and I have my son with me. We are at the Baur au Lac and I wonder if you would consider joining us for dinner this evening? Your wife too, of course, if she is with you."

Lauder considered this request. "You are staying at my favorite hotel, you know." Perhaps confident all business between us was now over he finally acceded that he and Frau Lauder would indeed be able to dine with us at 8 o'clock. With an air of quiet resignation I departed. At least another meeting had been established.

At lunch, Owen described his trip to Lucerne; how helpful the concierge had been; that his still limited French had sufficed in this German speaking canton. I was mindful

how this nice-looking boy, tall for his age, had a quiet maturity in advance of his eleven years. Then I described my morning meeting. During the flight over I'd briefed him on what I was here to accomplish. This evening's dinner with the Lauders, I explained, would be an opportunity to show them we were both decent, right-minded Americans, so "just be yourself, Owen."

That afternoon I needed to visit the bank where the funds had been deposited. Not that for a moment I doubted I would be able to withdraw them; I just wanted to be certain. Directing Owen to ask the concierge for suggestions on what he could do until we met again at 4 o'clock, I too availed myself of the concierge for directions. He suggested a taxi. Next I telephoned the bank to inform them I would be visiting that afternoon. I was told, "Zwei dreizig Uhr, mit Herrn Schmidt, danke."

Swiss banks are unique; one doesn't casually amble into them from the street as one can in America. A porter greets you outside, to whom you state your purpose, the door is held open, and you are then ushered inside to a small conference room. At this bank I was taken to a miniscule sitting room, replete with over-stuffed chairs and a table with pots of both coffee and tea.

A few minutes passed before Herrn Schmidt joined me. He handed me a sheet of blank paper upon which I was asked to write the number of "my" account. Leaving the

room for a few moments he then returned with another sheet of paper.

This showed the present balance in the account. “Would you like to make a withdrawal?” he asked. “Not at this time,” I replied. “Perhaps during the next few days.”

Back at the hotel I met Owen and we called London to find out how Mom and Erin were faring then opted for a nap before the evening ahead. Refreshed, Owen teased me that no matter how stern the Lauder’s might prove as dinner companions, nothing would spoil his appetite tonight.

Waiting near the entrance to the hotel’s Restaurant Francais, I reflected on my chances of getting Lauder to sign off on the exchange given his opinion of the Penn Central and its methods. Before I was able to foster any likely strategies, he was before us, introducing his wife. Although they would be our guests at dinner it was immediately apparent who were the principles in this establishment. The Maitre d’hotel stepped forward to greet us:

“Doktor, Frau Lauder, ein Vergnugen! Ihr ublicher Apfellkuchen heute nacht?”

I had caught the word “Apfellkuchen” and Doctor Lauder explained that he and his wife always ordered their own special apple cake.

Lauder not only knew the menu by heart but the wine list as well. I insisted that the dinner would be on my expense

account, but adroitly deferred to his expertise by asking him to assist me select something fine from the Sommelier.

At a table for four Frau Lauder sat opposite me, with Owen on my right and Lauder on my left.

Light conversation began between us, all in a pleasantly inconsequential vein. Since their English was excellent the exchanges were easy and swift. The insouciant Herr Doktor, playing 'mein host,' suggested Lake Fish for starters followed by a restaurant specialty, Wild Boar in wine sauce. The best Swiss wines accompanied each course.

As the evening progressed I initiated a quiet side conversation with Lauder, asking him about his business interests in Brazil. With one ear, I absorbed some of the conversation between Frau Lauder and Owen, discerning a few exchanges in French. She inquired about his school subjects, about his mother and sister in London, what he thought of Zurich. She seemed surprised that he was only eleven, and that he actually enjoyed school and reading books. It seemed she had expected American children to be somewhat ill mannered and lacking all interest in Europe.

When we reached the cheese course, I related a story of an earlier trip I had taken to Europe as a typical American businessman, spending two days in Paris, two in Rome, two in Stockholm, then back to the states. Sud Aviation's head had invited me to lunch at a famous restaurant in the Bois

de Boulogne. From course-to-course my host talked about how beautiful the trees were at this time of year, the renovations at the Tuileries, and everything but business, which I was most eager to do. Finally I was driven to say, "Monsieur Dalliet, don't the French ever talk business at lunch?" He replied, "Oui, Monsieur Prell, but only between the fruit and the cheese."

"So is it permissible now, Doctor Lauder, for me to spend a few minutes talking business – between the cheese and your special Apfellkuchen?" That was when the crisis ensued. He became very upset, expounding in an agitated voice how he was lied to, cheated and wronged by all. He would not agree to any proposal I might make and he certainly didn't want to hear about the poor widows who would lose their investment. It took Frau Lauder's intercession to quiet his tirade.

Before the evening ended, I overheard Frau Lauder ask Owen if he had purchased something to take back to his mother in London. She then suggested collecting him from the Baur au Lac the next morning to take him shopping, adding, "Remember to ask your father for his credit card."

Returning to our room later, I thanked Owen for his contribution to the evening and for entertaining Frau Lauder. While it certainly did not look as though the trip would be successful I was still happy we had made this excursion together.

About-face and Rewards

Around 8:30 the next morning I was surprised to receive a phone call from Doctor Lauder. "Mr. Prell, would you please come to my office, about ten o'clock?"

"Of course, I will certainly be there," And before leaving for my appointment I remembered to give Owen my Diner's Card with the admonition not to spend too much.

Today I had planned to try a different strategy; to visit Schneider, the other holdout, and find out if he would accept a payoff. His acceptance might then have allowed me to attempt one more stab at additional pressure on the good Doctor. I still had time to try doing that, but first I was curious to see what Lauder wanted. Fully expecting a last 'flea in my ear' about the Penn Central I was unprepared for a shock.

"Mr. Prell, I will sign your damn documents, and be done with it. Do you have them with you?"

"Yes, right here" I said, "and . . . and I do thank you, Dr. Lauder."

From my brief case I quickly extracted the agreement forms. "Shall we discuss the details regarding the financial arrangements?"

Lauder hadn't changed his demeanor, "Mr. Prell, I don't want anything including any warrants. I just want to be rid of the Penn Central. I shall never again deal with Pressprich or any other who was involved in all this. Now, please take your papers and be gone."

"But sir – the exchange notes and warrants will be sent to you by Schroders Bank. And I have no doubt you will not only be repaid, but you will be able to make a profit on the warrants too."

"As I have repeatedly told you, you can keep it all, I simply want to wash my hands of the whole affair. Not enough I am cheated and lied to – now *my wife* is accusing me of being rude to you and your son last night! I tell you, I have had enough."

With a world-weary sigh, and rather resentfully, he continued, "Go see Herr Schneider. Here is his address. He is expecting you. He will sign your papers and you may pay him something if you wish. Thank you for hosting us at dinner. It was a pleasure meeting you and your son. Und Auf Wiedersehen, Mr. Prell."

His obvious eagerness to see me gone was readily matched by my own to do likewise. Once outside it was but a short cab ride to reach Schneider's office. With remarkable brevity he agreed – for a small sum – to sign the agreements. I told him I would return that afternoon with the funds, then he would deliver the papers to me.

Elated, I decided to walk back to the hotel. The notes wouldn't be called; the Penn Central Company would be saved. Should I tell my wife first? Immediately report back to Harry Volk, to Lloyd Cutler, to my contact at Schroders Bank? What if Herr Schneider changed his mind this afternoon? No, better to wait until I had all of the signed agreements in hand.

Owen was talking to the concierge when I walked into the lobby. As we proceeded upstairs together he showed me one of the old-fashioned heavy keys to a Baur au Lac room that the Concierge has just given him as a present.

"Dad," he told me, "several rooms have been merged, so one door was eliminated. He gave me this key to remember my visit here. He's been so nice, I'd like to give him something when we leave."

"That, Owen, you will do. But first, tell me how your shopping trip with Frau Lauder went."

"Great," he said, "You won't believe the gift I bought Mom."

Back in our suite he went off and returned with a large jeweler's box. Inside was a magnificent eighteen-inch braided gold necklace interspersed with rectangles of gold-flecked lapis lazuli. Noting the name on the box I knew this was no insignificant bauble and was curious, not to say anxious, about the cost. Yet it was lovely.

"Frau Lauder took me to several places on the Bahnhoffstrasse, but the one called Meister was best. They showed me lots of stuff but I really liked this. What do you think, Dad?"

"Well … if Dr. Lauder had not signed the agreements, I think you would be returning this to Meister tomorrow. But since he did, then you can give it to your mother when we return to London."

Owen laughed, "You mean he really did okay your deal?"

"He did, and I don't know what I would have done without you because it was you who managed to pull it off! Now let's have lunch. I must go out again this afternoon to finalize things."

Amazing how easy it was to withdraw the funds from the bank with just a simple number. At Herr Schneider's office I obtained his signature on the agreements in exchange for the cash. And finally, I delivered to Schroders Bank the two sets of signed agreements. It was still only Wednesday, December the 29th, and with any luck Owen and I would be

back in London by Thursday morning. *Fait accompli.* Now to all those telephone calls.

The aftermath is well known and documented --- The Penn Central Company did retire the restructured notes, and the warrants became worth a ***bundle***. Yet no one ever inquired what happened to the remaining funds in the numbered account in the Swiss bank. There is a temptation on my part, to concoct an intriguing and even sinister story. Or I could report they were returned to the Board of the Penn Central Company. The strange truth remains, after more than thirty-plus years, I simply can't remember what happened to the balance of the money (if there was any and if I ever did know?).

Our son is now a successful attorney in San Francisco, Cornell Law School graduate, and an editor of his law Review. Each time he sees his mother wear the necklace (which she loved, of course) he reminds her of how it was acquired; and to whom it should someday be passed.



Necklace purchased from Meister & Co. (Zurich)



1970 Post-bankruptcy stock certificate



Room key from the Baur au Lac Hotel (Zurich)



2002 – Owen T. Prell with the Baur au Lac room key

Postscript

It is now 2010 and the only surviving characters in this story are my son Owen and myself. In 2008 the world experienced some monstrous bankruptcies --- Lehman Brothers being the largest with $615 billion in debt. In 1970 when the Penn Central Railroad filed for bankruptcy it had debt of only about $3 billion; however at that time it was the largest failure ever sustained by an American corporation. Memory is mercurial and the downfall of the Penn Central is considered ancient history. None-the-less, it is worth revisiting as a case study in what to avoid business-wise, and what role serendipity can sometimes play in avoiding disaster scenarios.

Addendum

The author believes the conversations and events happened as related. In an unsigned note to Mr. Prell from Mr. Lloyd Cutler (Dated June 25, 2002) Cutler acknowledged meeting with the author, however he stated he has no recollection of anything, which concerned funds being put into a Swiss Bank account or anything about some members of the Board of Directors of the Penn Central providing their own personal money to fund the said account.

Therefore Mr. Prell has prepared the following statement to assist readers, in deciding if they should accept, as valid, his description of what was said during the meeting in Lloyd Cutler's office.

> "I believe my recollections as to the details of the conversation with Mr. Cutler, are as I related them in the story. Mr. Cutler wrote that he had no memory of discussing with me the Fund, which had been set up in the Swiss Bank; but one might ask: 'Why did Mr.

Cutler ask Mr. Volk to have someone come to Washington D.C. for a meeting?' Was it not to "size-up" the person to be trusted with the Swiss bank account, and then to confide in him the details of the account?"

"If the meeting was simply to give me the documents to be signed, or to merely explain about the hold-outs (Items I already knew about) then why ask me to take the "red-eye" to Washington D.C., meet for an hour in private, and then have me rush back to Los Angeles, to arrange for a flight to Zurich? Certainly the reason for the trip was for Cutler to meet 'this Mr. Prell in person,' size him up, and then once satisfied, give him the details which he had received from a person representing some members of the Board of the Penn Central. In the note I received late in June of 2002, Cutler told me he did not represent the Penn Central or its Board that at that time his law firm represented the agent for the Swiss Franc Noteholders. He wrote that the Law Firm representing the Penn Central was a Philadelphia law firm, with whom he was in contact."

"From the time I left Cutler's office until I met with the primary "hold-out," I did not have any conversations with anyone (other than Harry Volk) concerning what I had been asked to do. So if Lloyd Cutler didn't convey the details about the Swiss Bank Account, who did instruct me? And if it didn't happen

as described, why was I asked to rush to a private, one-on-one meeting in Washington D.C.? No, it was more than just to be handed a few papers, which could have been delivered by an overnight Courier Service. It was for the purpose of being given information, which could not be in writing, and which had to given in person (not delivered over a telephone line)."

Donald B. Prell

June 25, 2002

Mr. Donald B. Prell
P. O. Box 1927
Palm Springs, California 92263-1927

Dear Don:

I read with interest your "Untold Story." It brings back a very interesting episode.

I need, however, to point out a couple of respects in which my memory differs from what you have written.

To begin with, my firm and I were never counsel to Penn Central Company or its Board. (Penn Central's counsel on this matter was Dechert, Price & Rhoads of Philadelphia.) We were counsel to a group of Noteholders separate from the one Union Bank belonged to.

Penn Central had issued two sets of notes. One set, denominated in Swiss Francs, had been issued through Ufitec, S.A., a firm owned by the Zilkha family, to various banks all located in Europe. The other set, denominated in U.S. Dollars, had been issued through Pressprich to a group that included Union Bank.

After the railroad went into Section 77 proceedings, my firm and I began to represent the Swiss Franc Noteholder group. Our objectives at that point were to (a) recover the cash that the Penn Central financing vehicle (a Netherlands Antilles corporation) was required to hold for U.S. tax purposes, and (b) refinance into some instrument that would have as much value as possible if Penn Central were ever able to pay off the notes or its stock ever regained value.

We negotiated such a refinancing.
Penn Central, however, needed participation of all note holders of both groups in order to avoid the risk of being thrown into an involuntary bankruptcy--something that would have hurt the note holders as well. When it came to persuading the Dollar note holder group, however, there were two holdouts.

My memory is consistent with your account of *your* role in winning over the two holdouts in the Dollar group, but I am afraid you have exaggerated mine. I believe I met with you, filled you in as you say on the details of the refinancing, gave you the refinancing papers to be signed by the two holdouts, and urged you to win them over if you could. But I have no recollection of knowing of a $300,000 fund, and I did not tell you that any such fund had come from any Penn Central directors. (I think it is very unlikely that any directors made any such contribution.)

I appreciate the good work you did in dealing with the two holdouts. But the tactics for doing so did not come from me, and any funds that may have been involved did not come from my clients or from any other source known to me.

If you would like I would be happy to have a conversation in which we try to jog each other's distant memories.

Best regards,

Lloyd N. Cutler



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